

IC 27-14-3

Chapter 3. Mutual Insurance Holding Companies

IC 27-14-3-1

Requirement to comply with IC 27-14-2

Sec. 1. An MIHC organized under this article must meet the requirements of IC 27-14-2.

As added by P.L.5-2000, SEC.4.

IC 27-14-3-2

Contents of articles of incorporation

Sec. 2. The articles of incorporation of an MIHC must contain the following, or provisions at least substantially equivalent to the following:

- (1) The name of the MIHC, which must include the term "mutual" or the abbreviation "MIHC".
- (2) A provision specifying that the MIHC does not have the power to engage in the business of issuing insurance policies or contracts.
- (3) A provision specifying that the MIHC is not authorized to issue voting or any other capital stock.
- (4) A provision setting forth the rights of members of the MIHC in the equity of the MIHC in the event of a conversion to a stock company under Indiana law or a dissolution under IC 27-1-10, including the rights of the members to the assets of the MIHC.
- (5) A provision specifying that:
 - (A) a member of the MIHC is not, as a member, personally liable for the acts, debts, liabilities, or obligations of the MIHC; and
 - (B) no assessment may be imposed upon the members of the MIHC by any person, including:
 - (i) the board of directors, members, or creditors of the MIHC; and
 - (ii) any governmental office or official, including the commissioner;because of any liability of any company or because of any act, debt, or liability of the MIHC.

As added by P.L.5-2000, SEC.4.

IC 27-14-3-3

Rights and obligations of members

Sec. 3. Members of an MIHC have rights and obligations specified in:

- (1) this article; and
- (2) the articles of incorporation and bylaws of the MIHC.

As added by P.L.5-2000, SEC.4.

IC 27-14-3-4

Direct payments to members

Sec. 4. The MIHC may not make any direct payment of income, dividends, or other distribution of profits to a member of an MIHC with respect to any membership interest in the MIHC, other than as directed or approved by the commissioner.

As added by P.L.5-2000, SEC.4.

IC 27-14-3-5

Outside directors

Sec. 5. (a) At least a majority of the following must be made up of outside directors:

- (1) The board of directors of an MIHC.
- (2) The board of directors of a stock holding company that is not a wholly-owned subsidiary of an MIHC.
- (3) The board of directors of a reorganized insurer that is not a wholly-owned subsidiary of an MIHC.
- (4) Any audit committee or executive committee of the board of directors of:
 - (A) an MIHC;
 - (B) a stock holding company that is not a wholly-owned subsidiary of an MIHC; or
 - (C) a reorganized insurer that is not a wholly-owned subsidiary of an MIHC.

(b) All of the directors who are members of any management compensation committee of the following entities must be outside directors:

- (1) An MIHC.
- (2) A stock holding company that is not a wholly-owned subsidiary of an MIHC.
- (3) A reorganized insurer that is not a wholly-owned subsidiary of an MIHC.

(c) All of the directors who are members of any pricing committee of the following entities with responsibility for approving the price of stock sold in any offering under this article must be outside directors:

- (1) A stock holding company.
- (2) A reorganized insurer.

(d) The commissioner may determine, after furnishing the affected company and director with notice and opportunity to be heard, that an individual does not qualify as an outside director or otherwise should not be considered an outside director. Such an individual may continue to serve as a director, but from the date the commissioner notifies the affected company in writing of the determination and the basis for the determination, the individual may not be considered an outside director.

(e) A director's failure to qualify as or be considered an outside director does not affect the validity of any action taken by the company, the board of directors, or any committee of the board of directors.

(f) Concurrent with the initial public offering of any securities of a stock holding company or a reorganized insurer, the majority of the

members of the board of directors of the MIHC must be disinterested directors.

As added by P.L.5-2000, SEC.4.

IC 27-14-3-6

Rights and obligations of an MIHC

Sec. 6. (a) Except as provided in subsection (b), an MIHC:

(1) has and may exercise all the rights and privileges of insurance companies formed under this title; and

(2) is subject to all the requirements and regulations imposed upon insurance companies formed under this title.

(b) The exceptions referred to in subsection (a) are as follows:

(1) An MIHC does not have the right or privilege to write insurance (except through an insurance company subsidiary) and is not subject to any requirement or rule adopted under IC 4-22-2 relating to the writing of insurance.

(2) An MIHC is not subject to the deposit requirement in IC 27-1-6-15(d).

(3) An MIHC is not subject to any statute or rule adopted under IC 4-22-2 that is imposed upon insurance companies formed under this title to the extent that the statute or rule is in conflict with this article.

(4) An MIHC is not subject to the investment requirements under IC 27-1-12 or IC 27-1-13 that limit or restrict investments in subsidiaries.

(5) An MIHC is not subject to risk-based capital requirements under IC 27-1-36.

(6) An MIHC is not subject to a requirement under IC 27 if the commissioner determines by order or rule adopted by the commissioner under IC 4-22-2 that the requirement does not apply to the MIHC.

As added by P.L.5-2000, SEC.4.

IC 27-14-3-7

Annual statement; certifications

Sec. 7. (a) Not later than July 1 of each year, an MIHC shall file with the commissioner an annual statement containing the following information:

(1) Audited financial statements, including:

(A) an income statement;

(B) a balance sheet;

(C) a statement of cash flows; and

(D) footnotes.

(2) Complete information on the status of any condition imposed in connection with the approval of a plan of reorganization.

(3) An investment plan covering all assets of the MIHC.

(4) A statement that the MIHC and its affiliates have complied with section 8 of this chapter.

(5) A statement that describes any changes in the members'

interests and the reason for any change in the members' interests.

(b) Not later than July 1 of the first, second, and third years after completion of a reorganization under IC 27-14-2, a reorganized insurer shall file with the commissioner:

(1) a certificate of an actuary stating that the methodology used by the reorganized insurer for any payment of policyholder dividends in the previous year complied with the methodology stated in the plan submitted under IC 27-14-2-4(5) or other methodology approved by the commissioner; and

(2) a certificate of an independent auditor of the reorganized insurer that the calculation of any participating policy dividends paid during the previous year complied with the methodology stated in the plan submitted under IC 27-14-2-4(5) and was accurate.

(c) If the certification of the actuary or auditor required in subsection (b) has not been filed or if the commissioner has other reasonable cause, the commissioner may employ at the expense of the reorganized insurer an independent actuary or auditor, or both, to issue the certifications required in subsection (b).

(d) The requirement to submit the certifications under subsection (b) may be extended by the commissioner beyond the third year after completion of a reorganization under IC 27-14-2:

(1) by order applicable to a particular recognized insurer if the commissioner determines that further certifications are necessary for the protection of the interests of the policyholders of the reorganized insurer; and

(2) by rule adopted under IC 4-22-2 if the commissioner determines that further certifications are necessary for the protection of the interests of the policyholders of all reorganized insurers or a particular class of reorganized insurers.

As added by P.L.5-2000, SEC.4.

IC 27-14-3-8

Material transactions

Sec. 8. (a) For the purposes of IC 27-1-23:

(1) an MIHC and its affiliates constitute an insurance holding company system; and

(2) an MIHC is considered to be an "insurer".

However, a separate filing or approval is not required under IC 27-1-23 for an acquisition or a reorganization that is included in a plan approved under this article.

(b) For the purpose of this section, a "material transaction" means:

(1) a transaction described in IC 27-1-23-4(b):

(A) between an MIHC and any affiliate; or

(B) between any affiliates of an MIHC if the transaction equals or exceeds the percentages of admitted assets or surplus set forth in IC 27-1-23-4(b) of any reorganized insurer of the MIHC; or

(2) a transaction described in IC 27-1-23-4(b) between an MIHC and any person as specified in a rule adopted by the commissioner under IC 4-22-2 or an order issued by the commissioner.

(c) An MIHC may not enter into a material transaction unless the MIHC has notified the commissioner in writing of its intention to enter into a material transaction at least thirty (30) days before the transaction, or a shorter period as the commissioner may permit, and the commissioner has not disapproved the transaction within that period.

(d) In addition to the requirements of IC 27-1-23-4(a) and IC 27-1-23-4(d), a material transaction must:

- (1) be fair and reasonable to the members of the MIHC; and
- (2) not violate the members' surplus protection principle.

(e) An MIHC and its affiliates may not enter into transactions that are part of a plan or series of like transactions if the purpose of those separate transactions is to circumvent any rules of the commissioner prohibiting a material transaction or this section.

As added by P.L.5-2000, SEC.4.

IC 27-14-3-9

Interest of member not considered a security

Sec. 9. The interest of a member in an MIHC does not constitute a security under Indiana law.

As added by P.L.5-2000, SEC.4.

IC 27-14-3-10

Fiduciary responsibilities and liability of officers and directors

Sec. 10. (a) After the effective date of a plan of reorganization, the officers and directors of the MIHC:

- (1) owe the same fiduciary responsibilities to members of the MIHC as the officers and directors of the former MIC owed to members of the former MIC; and
- (2) are subject to potential liability to members of the MIHC to the same extent as the officers and directors of the former MIC were to members of the former MIC before the effective date of the plan of reorganization.

(b) An action may be brought to recover for the violation of fiduciary responsibilities under this article under IC 34-11-2-4, or, in the case of fraud, under IC 34-11-2-7.

As added by P.L.5-2000, SEC.4.

IC 27-14-3-11

Dividends and distributions

Sec. 11. (a) The reorganized insurer must obtain commissioner approval of the dividend practices with respect to participating policies and contracts in force as of the effective date of the reorganization to be followed by the reorganized insurer as set forth in IC 27-14-2-4(5) if the dividend practices of the reorganized insurer will be different from the dividend practices of the MIC.

(b) The commissioner may require the establishment of a closed block or other mechanism that the commissioner finds to be fair for the protection of MIC policyholder dividends.

(c) The dividend practices of the reorganized insurer, the requirement to establish a closed block or other mechanism, or the terms of the closed block, may be modified after approval under subsection (a) or subsequent to a reorganization under IC 27-14-2 only with the prior approval of the commissioner on application of the reorganized insurer.

(d) Neither a stock holding company nor a reorganized insurer may pay dividends or make other distributions with respect to its stock to its shareholders if the reorganized insurer has failed to pay policyholder dividends in compliance with the dividend practices approved by the commissioner in accordance with this section.

(e) A reorganized insurer or stock holding company of the MIHC that has any shareholder other than the MIHC or a direct or indirect wholly owned subsidiary of the MIHC may not declare or pay any dividend or other distribution on its capital stock except to the extent of:

- (1) one (1) or more years of net income attributable to the year of or years after the effective date of the plan of reorganization; and
- (2) proceeds from the issuance of capital stock (which as of any date shall be that amount equal to the net proceeds received by the issuer less amounts previously paid out of the net proceeds to stockholders in the form of dividends or other distributions).

As added by P.L.5-2000, SEC.4.

IC 27-14-3-12

Compensation of directors and executive officers

Sec. 12. (a) For purposes of this section, "executive officer" has the same meaning as the term is defined by the Securities and Exchange Commission in 17 CFR 240.3b-7.

(b) After the effective date of a reorganization under this article, the compensation of directors or executive officers of a company shall include only those amounts that satisfy any one (1) of the following criteria:

- (1) Amounts that are payable with respect to services rendered before the effective date of the plan of reorganization.
- (2) Amounts that would be deemed to be reasonable compensation by the Internal Revenue Service and therefore allowed as proper expense deductions for federal income tax purposes.
- (3) Amounts that are disclosed to the policyholders in proxy solicitation materials or other written materials approved by the commissioner as part of the notice of the meeting of the members called to approve a plan of reorganization, are approved by the commissioner in principle and concept as part of the approval of the plan of reorganization, and are approved by the commissioner as to specific amount prior to payments

after the effective date of the plan of reorganization.

(4) Amounts that the commissioner deems necessary to preserve the safety and soundness of the stock insurance company subsidiary by enabling it to engage and retain capable employees.

(5) Amounts payable solely out of net income of the company after the effective date of the plan of reorganization.

As added by P.L.5-2000, SEC.4.

IC 27-14-3-13

Investment and operations in businesses outside insurance business

Sec. 13. A company may invest and conduct operations in businesses outside the ordinary course of the insurance business only from funds separately raised and net income earned, after the effective date of a plan of reorganization.

As added by P.L.5-2000, SEC.4.